

ABORTION BY GYNECOLOGIST

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Matt Throckmorton

AN ACT RELATING TO ABORTION; REQUIRING ABORTIONS IN UTAH TO BE PERFORMED BY A GYNECOLOGIST; PROVIDING AN EXCEPTION; AND MAKING TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

76-7-302, as last amended by Chapter 2, Laws of Utah 1991, First Special Session

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **76-7-302** is amended to read:

76-7-302. Circumstances under which abortion authorized.

(1) ~~[An] (a) Except as provided in Subsection (1)(b), an~~ abortion may be performed in this state only by a physician licensed to practice medicine under the Utah Medical Practice Act ~~[or an osteopathic physician licensed to practice medicine under the Utah Osteopathic Medicine Licensing Act]~~ who has completed a residency in gynecology and is certified by at least one hospital as a gynecologist and, if performed 90 days or more after the commencement of the pregnancy as defined by competent medical practices, it shall be performed in a hospital.

(b) If a serious medical emergency compels an abortion, any physician licensed to practice medicine under the Utah Medical Practice Act or by any osteopathic physician licensed to practice medicine under the Utah Osteopathic Medicine Licensing Act may perform the abortion.

(2) An abortion may be performed in this state only under the following circumstances:

(a) in the professional judgment of the pregnant woman's attending physician, the abortion is necessary to save the pregnant woman's life;

(b) the pregnancy is the result of rape or rape of a child, as defined by Sections 76-5-402 and 76-5-402.1, that was reported to a law enforcement agency prior to the abortion;

28 (c) the pregnancy is the result of incest, as defined by Subsection 76-5-406(10) or Section
29 76-7-102, and the incident was reported to a law enforcement agency prior to the abortion;

30 (d) in the professional judgment of the pregnant woman's attending physician, to prevent
31 grave damage to the pregnant woman's medical health; or

32 (e) in the professional judgment of the pregnant woman's attending physician, to prevent
33 the birth of a child that would be born with grave defects.

34 (3) After 20 weeks gestational age, measured from the date of conception, an abortion may
35 be performed only for those purposes and circumstances described in Subsections (2)(a), (d), and
36 (e).

37 (4) The name of a victim reported pursuant to Subsection (2)(b) or (c) is confidential and
38 may not be revealed by law enforcement or any other party except upon approval of the victim.
39 This subsection does not effect or supersede parental notification requirements otherwise provided
40 by law.

Legislative Review Note
as of 1-14-00 8:56 PM

This legislation raises the following constitutional or statutory concerns:

The standard for determining whether or not statutes placing restrictions on abortions are constitutional was established in *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992). In that case, the United States Supreme Court held that "an undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability." 505 U.S. at 878. A court might determine that limiting the ability to perform an abortion to gynecologists places a substantial obstacle in the path of a woman seeking an abortion. If a court reached that conclusion, the law would be declared unconstitutional.

Currently, a licensed physician is legally authorized to perform all medical procedures that the physician's competence, ability, and education allow. By singling out a particular medical procedure (abortion) and restricting its practice to a particular category of physicians (gynecologists), this legislation may raise equal protection concerns.

Office of Legislative Research and General Counsel